IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

WILLIAM F. DAVIS	:	CIVIL ACTION
	:	
v.	:	
	:	
GENERAL ACCIDENT INSURANCE COMPANY OF AMERICA and WILLIAM JENKINS	:	NO. 98-4736

MEMORANDUM AND ORDER

HUTTON, J. April 15, 1999

Presently before the Court are Defendants' Motion for Entry of a Protective Order (Docket No. 14), Plaintiff William Davis' reply (Docket No. 18), and Defendants' sur reply thereto (Docket No. 19). For the reasons stated below, the Defendants' motion is **DENIED**.

I. BACKGROUND

Defendant General Accident Insurance Company of America ("General Accident") employed Plaintiff, William Davis, for fifteen years in its Information Services Department. Plaintiff consistently received high performance evaluations. The Plaintiff, an African-American, reported to John Cousins. Cousins reported to Defendant William Jenkins.

In May 1996, General Accident terminated Cousins for complaining to the EEO Department that: (1) Jenkins made racist remarks; (2) blocked attempts to promote Davis; and (3) falsely accused Davis of not being qualified for promotions. Following the

termination of Cousins, General Accident instructed Davis to report to the EEO Department. Davis told the Department what he knew concerning Cousins' allegations. General Accident did not take any action against Jenkins.

Following this meeting with the EEO Department, General Accident denied Davis several promotions. Due to the threatening atmosphere and his belief that there was no future for him at General Accident, Plaintiff terminated his employment in September 1997. Subsequently, on December 29, 1997, Plaintiff filed a four-count complaint against General Accident and Jenkins. The four counts are: (1) a claim under 42 U.S.C. § 1981 - Count I; (2) a claim under 42 U.S.C. § 1985 - Count II; (3) a claim under 42 U.S.C. § 1986 - Count III; and (4) a retaliation claim under Title VII - Count IV.

During the time that General Accident employed Plaintiff, Derrick Coker worked as in-house counsel for the Law Offices of Ralph L. Herbst, II, one of the in-house legal offices that defended insureds of General Accident. Coker, who is also an African-American, alleges that Herbst harassed him based upon his race. Coker filed a grievance in May 1994 with General Accident's Human Resources Manager. Coker filed a complaint against General Accident in Coker v. General Accident Insurance Co., No. CIV.A.97-6321 (E.D. Pa.). Coker later settled his dispute with General Accident.

Plaintiff has now subpoenaed Alan Epstein, Esquire. Epstein was Coker's attorney in his lawsuit against General Accident. The subpoena seeks "[a]ll non-privileged records, pleadings, documents, files, or other documents within [Epstein's] possession or control referring or relating to William F. Davis and the matter captioned at Derrick Coker v. General Accident Insurance Company, NO. 97-CV-7321 (E.D. Pa. 1998)." On February 24, 1999, the Defendants filed this motion for a protective order.

II. STANDARD

Under the Federal Rules of Civil Procedure and in the United States Court of Appeals for the Third Circuit, district courts have broad discretion to manage discovery. See Sempier v. Johnson, 45 F.3d 724, 734 (3d Cir. 1995). Rule 45(c)(3)(A) of the Federal Rules of Civil Procedure authorizes a court to quash or modify a subpoena that subjects a person to undue burden. See Fed. R. Civ. P. 45(c)(3)(A)(iv); see also Composition Roofers Union Local 30 Welfare Trust Fund v. Graveley Roofing Enter., 160 F.R.D. 70, 72 (E.D. Pa. 1995). Accordingly, a court may quash or modify a subpoena if it finds that the movant has met the heavy burden of establishing that compliance with the subpoena would be "unreasonable and oppressive." Id.

Furthermore, Rule 26(b)(1) provides that discovery need not be confined to matters of admissible evidence but may encompass that which "appears reasonably calculated to lead to the discovery

of admissible evidence." Fed. R. Civ. P. 26(b)(1). Relevancy is to be broadly construed for discovery purposes and is not limited to the precise issues set out in the pleadings or to the merits of the case. See Oppenheimer Fund, Inc. v. Sanders, 437 U.S. 340, 351 (1978). Rather, discovery requests may be deemed relevant if there is any possibility that the information may be relevant to the general subject matter of the action. See id. As this Court has noted, "[r]elevance is broadly construed and determined in relation to the facts and circumstances of each case." Hall v. Harleysville Ins. Co., 164 F.R.D. 406, 407 (E.D. Pa. 1996). Once the party opposing discovery raises its objection, the party seeking discovery must demonstrate the relevancy of the requested information. See Momah v. Albert Einstein Med. Ctr., 164 F.R.D. 412, 417 (E.D. Pa. 1996). The burden then shifts back to the objecting party, once this showing is made, to show why the discovery should not be permitted. See id.

Courts have imposed broader restrictions on the scope of discovery when a non-party is targeted. See Thompson v. Glenmede Trust Co., No. CIV. A.92-5233, 1995 WL 752422, at *2 n.4 (E.D. Pa. Dec. 19 1995) (Hutton, J.). Nevertheless, discovery rules are to be accorded broad and liberal construction. See American Health Sys. v. Liberty Health Sys., No. CIV.A.90-3112, 1991 WL 30726, *2 (E.D. Pa. Mar. 5, 1991). Because the precise boundaries of the Rule 26 relevance standard will depend on the context of the

particular action, the determination of relevance is within the district court's discretion. See Thompson, 1995 WL 752422, at *2 n.4.

III. DISCUSSION

A. Standing

Before the Court addresses the merits of Defendants' motion, the Court must first consider Plaintiff's argument that the Defendants do not even have standing to object to a subpoena of Mr. Epstein, a non-party. Ordinarily, only the non-parties whom were served with the subpoenas may move to have them quashed under Federal Rule of Civil Procedure 45(c)(3)(A). See Smith v. Midland Brake, Inc., 162 F.R.D. 683, 685 (D. Kan. 1995); United States v. Urban Health Network, Inc., No. CIV.A.91-5976, 1992 WL 164950, at *1 n.1 (E.D. Pa. July 6, 1992); Sneirson v. Chemical Bank, 108 F.R.D. 159, 161 (D. Del. 1985). An exception exists, however, where a party claims "some personal right or privilege in respect to the subject matter of a subpoena duces tecum directed to a nonparty." Dart Indus., Inc. v. Liquid Nitrogen Proc. Corp. of Cal., 50 F.R.D. 286, 291 (D. Del. 1970).

While the Defendants do not specifically address whether they allege any personal right or privilege in the subject matter of the subpoenas, this Court finds that they have standing to challenge the subpoena of Mr. Epstein. In their argument requesting a protective order, Defendants claim that the subpoenas

involve the production of documents protected by the attorney-client privilege. See Florida v. Jones Chems., Inc., No. CIV.A.90-875, 1993 WL 388645, at *2 (1993) (finding that movants had standing to assert their claims of attorney-client and work product privilege with respect to the testimony and documents sought in the subpoena directed to a non-party). Moreover, Defendants allege some personal right in the documents produced during the Coker matter. See Dart Indus., 50 F.R.D. at 291-92 (finding that movant had standing to challenge subpoena because, while movant did not assert any personal privilege with respect to the documents requested in the subpoena, it did aver that some of these documents were "secret and confidential" and produced under protective orders limiting their disclosure). Accordingly, the Court is satisfied that the Defendants have standing to challenge the subpoena at issue.

B. Relevance and Overbreadth

The Defendants ask this Court to quash the subpoena because the subpoena is overbroad and not reasonably calculated to lead to the discovery of admissible evidence. More specifically, the Defendants contend that the Coker information is not relevant because: (1) Coker had no contact with Jenkins, the alleged harasser in this case, and (2) Coker was not located in the offices of the Plaintiff, where the alleged harassment took place in this case. The Plaintiff responds that this information is relevant

because it is evidence of a racially hostile work environment at General Accident.

This Court finds that the subpoena is not overbroad and is reasonably calculated to lead to the discovery of admissible evidence. First, the Court finds that the Defendants failed to demonstrate how the subpoena is overbroad. The Defendants only discuss in general terms the personal nature of the personnel files of their employees. This is insufficient to show overbreadth.

Second, the Court concludes that the Coker documents may reasonably be calculated to lead to admissible evidence in this case. While Coker may not have been similarly situated to Plaintiff, his treatment by General Accident may be relevant to whether a racially hostile work environment exists at the various offices in General Accident. See, e.g., Ingram v. Home Depot, U.S.A., Inc., No. CIV.A.97-8060, 1999 WL 88939, at *3 (E.D. Pa. Feb. 19, 1999) (rejecting defendants' relevancy objections to producing any personnel documents on employee who may have been involved in creating an alleged hostile working environment that defendants failed to remedy). For instance, this evidence may demonstrate that General Accident permits a racially hostile work environment which forced Coker and the Plaintiff-- both of whom are African-American-- and Cousins-- who is not African-American but reported Jenkins' alleged harassing treatment of African-Americans-

- out of their jobs. Thus, the Court rejects the Defendants' request to quash the subpoena.

C. Confidentiality

Next, Defendants ask this Court to issue a protective order due to the confidential nature of the Coker documents. Defendants contend that many of the documents concern Coker's representation of clients and, thus, are protected under the attorney-client privilege. This Court disagrees. The subpoena requests "[a]ll non-privileged records, pleadings, documents, files or other documents." Thus, by definition, the subpoena does not raise any privilege concerns. Accordingly, the Court denies the Defendants' motion in this respect.

D. Attorney's Fees and Self-Executing Disclosures

Finally, Plaintiff asks for attorney's fees in defending this motion. The Court refuses to exercise its discretion and award attorney's fees under the circumstances of this case. Furthermore, Defendants asks this Court to deny the discovery sought because Plaintiff failed to serve his self-executing disclosures. The Court will not quash or modify a valid subpoena based upon the unsupported allegation that Plaintiff has yet to serve his self-executing disclosures. Accordingly, the Court denies both of these requests.

An appropriate Order follows.

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O R D E R

AND NOW, this 15th day of April, 1999, upon consideration of the Defendants' Motion for Entry of a Protective Order, IT IS HEREBY ORDERED that the Defendants' motion is **DENIED**.

BY THE COURT:

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HERBERT J. HUTTON, J.